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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,811	03/08/2007	Gerardo Paciello	B-6052PCT 623586-5	9507

36716 7590 01/25/2010
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EXAMINER	
PRATT, HELEN F	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
01/25/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/586,811	PACIELLO, GERARDO	
	Examiner	Art Unit	
	Helen F. Pratt	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *19 July 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *4-17-07*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is indefinite in the use of the term "triturating", in the use of the term "refining", and in the term "stationing the heated product". It is not known what is intended by the use of these terms.

Claim 6 is indefinite in the use of parenthesis. It is not known whether the phrase in the parenthesis is claimed or not.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray et al. (EP 0 888 718 A1) in view of Dagestan Food Ind. (SU 548290 and Derwent abstract 1978-01452A) and Bibby (British patent 1 339 939).

Ray et al. disclose a process as in claim 1 of heating, (step 3, separating the tomatoes into juice and slurry, separating the seeds and peels from the slurry, dividing

finely the separated slurry (triturating, step 2) and reincorporating the divided slurry into the juice (abstract). The peels and seeds can be reincorporated back into tomato mass before division (step 9) (page 5, lines 20-24 and claims 1 and 7, page 8). The reference discloses that the tomatoes are first chopped and then heated enough to deactivate the enzymes. Temperatures of from 90 to 110 C may be used (page 3, lines 49-55).

Claim 1 differs from the reference in the step of sorting the product, and in grinding (triturating) (step 2) and in adding the fiber back into the grinding step or the juice or puree back into the heating step. However, it is well known to sort fruit or tomatoes to remove unsuitable fruit from the process if the fruit is bruised or spoiled. No particular degree of dividing is claimed to reach a level of triturating. The term triturating according to the dictionary is to reduce to a powder by rubbing or grinding. The peels and seeds certainly contain fiber which is added back into the tomato mass before division. The claim only requires one of the methods of either adding the fiber back into the grinding step or adding the puree back into the heating step. SU patent to Dagestan food Ind. disclose a method of grinding solid material which can be vegetables and fruits and recirculating unreacted pulp (paragraph 2 of abstract). Bibby discloses recirculating chopped pulp, reheating it and recirculating the pulp (col. 1, lines 30-40). Pulp is known to contain fiber. Therefore, it would have been obvious to sort the fruit, to grind or divide the fruit, and add fiber back into the divided mass as disclosed by Dagestan Food and to recirculate pulp in the process of Ray et al.

Claim 2 further requires a stationing step of from 0-30 minutes in a tank or in tubes. However, zero time means that this step is not required. At any rate, it would

have been obvious to use a stationing step, which is seen using a holding tank for the divided fruit in the process in order to have a place to store the partly processed fruit before further refining.

Claim 3 further requires spraying the puree back into the heating step or triturating step. However, spraying is a common method of moving juices, and no difference is seen in passing the juice or material through pipes or in spraying absent a showing to the contrary since the juice gets from one place to another in either method. Therefore, it would have been obvious to spray or pipe fruit material back into another ingredient as a method of moving the product.

Claim 4 further requires recirculating part of the refined juice or puree, and claim 5 requires from 5 to 25% of the refined juice or puree. Bibby as above discloses recirculating chopped pulp. No difference is seen at this time in chopped pulp and puree. It would have been within the skill of the ordinary worker to recirculate a particular amount of pulp or puree depending on how viscous the end product is intended to have been. Therefore, it would have been obvious to recirculate puree and to use particular amounts of puree in the process of the combined references.

Claim 6 further requires only recirculating a part of the fibers from the refining step. Fibers are known to contain cellulose which is known for its thickening characteristics. It would have been obvious to recirculate only a part of the fibers depending on how viscous the end product was intended to have been.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Helen F. Pratt/
Primary Examiner, Art Unit 1794

12-22-09